BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

| ELBERT E. WEBBER, JR. Claimant |) |
|--|-------------------------------|
| VS. |))) Docket No. 251,03 |
| SUPERIOR INDUSTRIES INTL. Respondent |)))) |
| AND | |
| SUPERIOR INDUSTRIES INTL. CONSTITUTION STATES SERVICES |)) |
| Insurance Carrier |) |

ORDER

Respondent appeals the July 5, 2000, preliminary hearing Order of Administrative Law Judge Steven J. Howard. Claimant was awarded temporary total disability compensation commencing December 9, 1999, and continuing until further order or until reaching maximum medical improvement or having been released to any substantial or gainful employment.

Issues

In respondent's application, the only issues listed deal with claimant's entitlement to medical treatment and temporary total disability compensation. However, respondent, in its brief, also argued that the Judge did not have jurisdiction to hear the matter because claimant did not attach copies of medical records to the application for hearing as required by K.S.A. 1999 Supp. 44-534a. Respondent further argued in its brief that the Administrative Law Judge was in violation of K.S.A. 44-510c, which limits temporary total disability compensation awards to those situations where "the opinion of the authorized treating health care provider is shown to be based on an assessment of the employee's actual job duties with the employer, with or without accommodation." Those are the issues before the Appeals Board.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

K.S.A. 1999 Supp. 44-551 limits the rights of a party to appeal from a preliminary hearing order to situations where it is alleged that the administrative law judge exceeded

his or her jurisdiction in granting or denying the relief requested. Under K.S.A. 1999 Supp. 44-534a, the following issues are considered jurisdictional and subject to review by the Appeals Board "whether the employee suffered an accidental injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given or claim timely made, or whether certain defenses apply."

The issues raised by respondent are not issues over which the Appeals Board takes jurisdiction from a preliminary hearing appeal. The administrative law judge is empowered under K.S.A. 1999 Supp. 44-534a to decide issues dealing with medical treatment and temporary total disability compensation.

Respondent's objection regarding the failure of claimant to attach copies of medical records to the application for hearing was not raised to the Administrative Law Judge at the time of preliminary hearing. K.S.A. 44-555c(a) allows review by the Board upon questions of law and fact as presented to the administrative law judge. The issue dealing with claimant's failure to attach the medical records to claimant's application for hearing was not discussed at the time of preliminary hearing. Additionally, the medical records, which initially were marked as Claimant's Exhibit 1, were admitted into evidence without objection, marked as Respondent's Exhibit A.

For the above reasons, the Appeals Board finds that the appeal of respondent in this matter is not one over which the Appeals Board will take jurisdiction from a preliminary hearing, and the respondent's appeal should be dismissed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Steven J. Howard dated July 5, 2000, remains in full force and effect, and the appeal of the respondent in the above matter should be, and is hereby, dismissed.

Dated this day of August 2000.

IT IS SO ORDERED.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Troy A. Unruh, Pittsburg, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director